IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

WP(C).No. 1264 of 2007(A)

PETITIONER:

E. SALIM,
EDAMANNAL HOUSE, ORAVIL POST,
NADUVANNUR, KOZHIKODE.

BY ADV. SRI.P.V.JYOTHI PRASAD

RESPONDENTS:

KOZHIKODE CORPORATION,
REPRESENTED BY ITS SECRETARY, KOZHIKODE.

BY ADV. SRI.M.P.PRABHANANDAN,SC,KOZHIKODE CORPN
SRI.P.V.KUNHIKRISHNAN,SC,KOZHIKODE CORP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/06/2007 ALONG WITH WPC NO. 15152 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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W.P.(C).No. 1264 & 15152 OF 2007

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Dated this the 25th day of June, 2007

JUDGMENT

Petitioner in W.P.(C)No.15152/07 has approached this court challenging Ext.P7 and seeks a direction not to allot the shop room No.G 21 and 22 in the new block of Indira Gandhi bus stand to any other applicants and direct the respondents to receive the arrears of licence fee for room No. G 21 and 22 in the New Block of Indira Gandhi bus stand from the petitioner's firm in monthly instalments and to collect the future licence fee as they agreed upon and direction is also sought to renew the trade licence to conduct the business in room No. G 21 and 22 of the new block of Indira Gandhi bus stand.

Case of the petitioner in brief is as follows:

Petitioner (Sudheer Babu) was the successful bidder in the year 1993 in respect of shop rooms No.G 21, 22 and G 34 under the respondent. But G 34 is occupied by one of the partner in the partnership firm. He has already obtained an order in the

other writ petition (W.P.(C)No.1264/07). Shop room No. G 21 and G 22 were closed down as the active partner of the partnership firm fell sick. When the dispute was settled by the partners and they want to open the shop, it is found that it was seized by the respondent, it is stated.

2. In the other writ petition (W.P.(C)No.1264/07) petitioner (E.Salim) claims to be a partner of the partnership firm. According to him, he has been occupying shop room G 34. He has approached this court and this court passed an interim order not to evict the petitioner from the room on condition that he pays Rs. 40,000/-.

3. Case of the Corporation on the other hand is that under Exts.R1, R2 and R3 agreements entered into between Sudheer Babu and the Corporation who was the licensee in respect of shop rooms G 21, G 22 and G 34. Licence was renewed upto the year 1995. Thereafter Sudheer Babu instituted O.S.No.391/97 before the Munsiff Court, Kozhikode. That suit was dismissed for default in the year 1999. Intimation regarding the same was given by the counsel for the Corporation only in the year 2006. It is stated that amount due from

Sudheer Babu in respect of three rooms in question comes to Rs. 18,97,452/- as on 15/03/2007. It is the case of the respondent that petitioner has suppressed the fact of filing of the suit and the dismissal of the same in 1999. It is true that petitioner was allowed to continue in shop rooms G 21 and 22 and licence fee was also accepted. According to the petitioner, it is collected upto 2003. It is the further case of the Corporation that coming to know of the fact that the licence fee was in arrears several persons came forward with offers. One such person who came forward is the additional second respondent. Additional second respondent has deposited Rs. 20 lakhs.

4. Learned counsel appearing for the Corporation and the additional respondent would submit that this is not a fit case where Article 226 should be exercised in favour of the petitioner, firstly because he is a person in arrears and despite notice being issued he has not paid the amount and secondly as conduct of the petitioner is suspect as he has not disclosed the filing of the civil suit and its dismissal, it is contended.

5. The manner in which offers were made and sought to be accepted appears to be not in keeping with the statutory

provisions. Learned counsel for the respondent fairly conceded that the procedure under Act provides for holding of an auction. Therefore the position is that petitioner on the one hand is in arrears, on the other hand additional respondent who has deposited Rs. 20 lakhs appears to have done it not in pursuance of the notification inviting tenders as is required under the Act.

6. Learned counsel for the petitioner would point out the provision in sub sections 4, 10, 11 and 12 of section 215. He would submit that under section 215(8) it is open to the local body to close down the unit on failure to pay the arrears. Sub section 10 provides notice to be issued calling upon licensee to pay the licence fee. Sub section 10 provides that upon the amount being paid, possession is to be handed over to the licencee. In the event amounts are not paid, licence itself is to be cancelled.

7. Learned counsel for the petitioner in W.P.(C) No.15152/07 submits that Sudheer Babu is prepared to pay off the entire amounts after adjusting the amount already paid.

Learned counsel for the Corporation would submit that Secretary will hear the petitioner and also the additional

respondents 2 and 3 and take a decision in accordance with law. In order to facilitate the early disposal of the matter, petitioner and additional respondents 2 and 3 may appear before the Secretary on 07/07/2007 at 11:00 a.m. The Secretary will hear the parties as aforesaid and take an appropriate decision in the matter in accordance with law within a period of six weeks from 07/07/2007.

(K.M.JOSEPH, JUDGE)

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